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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 24

Application Number: 09/319,649
Filing Date: June 10, 1999
Appellant(s): KAMADA ET AL.

James H. Walters
For Appellant

MAILED

JUN 16 2004

Technology Center 2600

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 16th, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The Appellants' statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The Appellants' statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellants' brief includes a statement that the following groups of claims to stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Group I – Claims 1, 2, 5-7, 10, 11 and 14-16.

Group II – Claims 3, 8, 12, 13 and 17-25.

Group III – Claims 4 and 9.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,758,257	HERZ et al.	05-26-1998
5,374,951	WELSH	12-20-1994
5,977,964	WILLIAMS et al.	11-02-1999
5,635,989	ROTHMULLER	06-03-1997

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3, 5-8 and 10-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 5758257) in view of Welsh (US 5374951) and further in view of Williams et al. (US 5977964).

Regarding claim 1, Herz discloses a method for obtaining audience data on TV programs (Col. 6, lines 35-Col. 7, lines 5), in an audience data-obtaining device, which uses a computer, the method comprises:

Obtaining, from outside, TV program table data (program list; Fig. 9, Col. 45, lines 14-20) for an area where viewer resides (demographics; Col. 11, lines 58-65+).

Detecting a channel that is being viewed by the viewer (Col. 26, lines 57-62);

Herz does not clearly disclose "Detecting times at which a viewing of the channel is started and ended"; "Identifying a program ID of currently viewed program from the TV program table data by comparing the detected channel and current time with the channel and time information of the TV program table data" and "Obtaining audience data which include at least the program ID and viewed time information of the viewed program based on the TV program table data and results of the detecting of times, the viewed time information including at least one of the (1) a view start time of each viewed program, (2) a view end time of each viewed program and (3) a difference between the view start time and the view end time; and transferring, via the Internet to a collection center, the obtained audience data along with ID data of the viewer." However, Herz discloses obtaining audience data (Col. 26, lines 57-Col. 27, lines 5; the customer profile is adjusted according to user selection of video program watched), which include viewed channel information and viewed time information of TV based on result of the detecting of the viewed channel (Col. 4, lines 59-Col. 5, lines 4; Col. 6, lines 56-65); and obtaining at least a program ID (particular video descriptive; Col. 4, lines 65+) of a viewed program from the TV program table data, by comparing the audience data (user profile) with the TV program table data (Col. 26, lines 57-Col. 27, lines 5).

Welsh teaches detecting times at which a viewing of the channel is started and ended (the household system must detects times at which a viewing of the channel is started and ended so the Central computer could maintained a database of collected event from each household that include times at which a viewing of the channel is started and ended; see Fig. 7, element 200; Col. 6, lines 5-15 and col. 14, lines 32-40); Identifying a program ID of currently viewed program from the TV program table data by comparing the detected channel and current time with the channel and time in formation of the TV program table data (Welsh household system must compare the detected channel and current time with the channel and time in formation of the TV program table data so the central computer could collect data as described see Fig. 7, element 200; Col. 14, lines 32-48) and obtaining audience data which include at least the program ID and viewed time information of the viewed program based on the TV program table data and results of the detecting of times, the viewed time information including at least one of the (1) a view start time of each viewed program, (2) a view end time of each viewed program and (3) a difference between the view start time and the view end time see Fig. 7, element 200; (Col. 14, lines 32-40); and transferring, via the telephone line to a collection center (central computer), the obtained audience data along with ID data of the viewer (Col. 6, lines 1-15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the features claimed, as taught by Welsh, so to provide an alternative way of collecting data that allows businesses to

test and experiment with a marketing strategy in a limited geographic area before committing to a full launch of the proposed marketing plan (Col. 1, Background of the invention)

Herz and Welsh do not clearly disclose transferring, via Internet to a collection center, the obtained program ID and the viewed time information along with ID data of viewer. However, Herz discloses the customer profile data and viewing habit data collected at set top box is periodically uploaded to the headend via return path 510 of Fig. 5 and 10 (Col. 42, lines 1-11) and Welsh discloses the event log is transferred via the telephone line to a collection center (central computer), the obtained audience data along with ID data of the viewer (Col. 6, lines 1-15).

Williams discloses user profile is collected at PC then transmits back to the Web server through Internet (Fig. 1, element 104 and 128; Col. 6, lines 17-24 and specifically Col. 16, lines 4-23). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz in view of Welsh to use Internet to transfer user profile, as taught by Williams, so to provide to user a flexibility to configure its system to store or to retrieve entertainment programming information from a wide variety of sources (Col. 3, lines 13-15).

Regarding claim 2, Herz (Col. 41, lines 15-42) and Williams (Col. 8, lines 48-65+) further disclose the step of obtaining TV program table (program list) include automatically and regularly obtaining the TV program table data by use of the Internet or a broadcasting medium, and (Williams; Col. 16, lines 4-23) the step of

transferring includes automatically and regularly performing the transmission to the collection center.

Regarding claim 3, with respect to the same analysis to claim 2, Herz (Col. 51, lines 5-8) and Williams (Col. 6, lines 3-16; Col. 8, line 50-53 and Col. 16, lines 4-23) further disclose by making use of opportunities of the viewer's accessing the Internet.

Regarding claims 5 and 10, Williams discloses a "convergence system" designed to integrate the world of entertainment system and computing platforms to achieve the beneficial results discussed. Therefore, Williams's system must have the capability to transfer/transmit data having an HTML format using Internet connection as disclosed (see analysis of claim 1).

Regarding claims 6 and 11, the apparatus claim is analyzed with respect to method claim 1.

Regarding claim 7, the apparatus claim is analyzed with respect to method claim 2.

Regarding claim 8, the apparatus claim is analyzed with respect to method claim 3.

Regarding claims 12 and 13, see analysis of claim 3.

Regarding claims 14-16, as to limitation " wherein the TV program table is a matrix data table which defines program ID' s of programs specified by channels in one axis of the matrix and time zones in another axis" is met by Herz' electronic program guide (Fig. 1, el. 102) and Williams 's program data base (Fig. 9).

Regarding claim 17, method claim 17 is analyzed with respect to claims 1 and 3.

Claim 18 recites "wherein the step of transferring is performed during an operation of a WWW browsing software" read on the system control agent 704 periodically transmits a copy of the behavior log to the remote server for data compilation purpose, see Williams Col. 16, lines 19-26. Because, without connecting to the Internet (using a Browser), Williams' s system could not transmit a copy of the behavior log to the remote server.

Claim 19 recites; "Wherein unsent audience data is transmitted upon request for terminating the operation of the WWW browsing software" is obvious in view of Williams (Col. 16, lines 19-26). Williams discloses the system control agent 704 periodically transmits a copy of the behavior log to the remote server for data compilation purpose. Williams does not specifically disclose that the latest copy of the behavior log is transmitted upon terminating the operation of the WWW browser. Therefore, it would have been obvious to one of ordinary skill in the art to transmit to the remote server the latest/unsent behavior log to the remote server upon request for terminating the operation of the WWW browser so to the provider could obtain the most accurate user behavior log for compilation purpose.

Claim 20 recites, "further comprising a step of connecting to the Internet before the step of transferring" reads on Williams (Col. 16, lines 19-26). Because, Williams 's system has to be connect to the Internet first in order to perform the function as disclose.

Claim 21 recites, "wherein the step of obtaining TV program table data is achieved by making use of opportunities of the viewer's accessing the Internet," reads on Williams (Col. 8, lines 48-52).

Apparatus claim 22 is analyzed with respect to device claims 6 and 8.

Apparatus claim 23 is analyzed with respect to method claim 18.

Claim 24 recites a recording medium storing a computer readable program is analyzed with respect to recording medium in claim 11 in view of method claim 3.

Claim 25 is analyzed with respect to method claim 18.

2. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 5758257) in view of Welsh (US 5374951) and further in view of Williams et al. (US 5977964) and further in view of Rothmuller (US 5635989).

Regarding claims 4 and 9, Herz, Welsh and Williams do not clearly disclose the step of obtaining audience data includes ignoring a continuously viewed time of a program when the viewed time is shorter than a predetermined time.

Rothmuller shows a system to obtain/store a viewed program in the favorite list if the program is viewed for more than a predetermined period of time (Fig. 4, Col. 5, lines 59-66). Programs that user merely scan through are excluded from the favorite list. Therefore, it would have been obvious to modify Herz in view of Welsh and Williams to obtain only viewed program for more than a predetermined period of time, as taught by Rothmuller, so to insure that the user has more than just a passing interest in the program.

(11) Response to Argument

a. Group 1

Appellants argue, "...There is no indication within Herz of whether the act of simply selecting a program for as short a period of, for example, just one minute, qualifies as "watching" it."

In response, the Examiner respectfully disagrees with Appellants argument "...There is no indication within Herz of whether the act of simply selecting a program for as short a period of, for example, just one minute, qualifies as "watching" it" because Appellants argument could not be interpreted into the claim limitation; therefore it is moot.

Appellants further argue "Herz does not teach that the information having at least one of a start view time, an end view time, and a difference between the start and end view time is transmitted. Independent claims 1, 6, 11, 17, 22 and 24 recite this concept."

In response, the Examiner respectfully disagrees with Applicant because Applicant's arguments against Herz references individually where the rejection is based on combinations of references Herz in view of Welsh and further in view of Williams.

As indicated from Appellants, the claim limitation only requires that "the information having at least one of a start view time, an end view time, and a difference between the start and end view time is transmitted." Thus, from the above ground rejection, the examiner indicates that Herz does not clearly

disclose "Detecting times at which a viewing of the channel is started and ended". To cure this deficiency, Welsh teaches a system detects 'times' at which a viewing of the channel program is being viewed by a user wherein the 'times' being viewed is the times at which a viewing of the channel is started and ended and is collected at the central computer Database (Fig. 7, el. 208) from the user device (see Welsh; Col. 6, lines 5-15 and Col. 14, lines 32-40); Thus, Appellants' claim limitation "the information having at least one of a start view time" is met by Welsh 'time' 208 Fig. 7 (i.e., the time the user starts to select or watch a TV program).

b. Group II:

Appellants argue, "Applicants respectfully disagree with the Examiner's assertion that Herz takes the opportunity of making use of the Internet to perform any functions as needed by a user. This is proposed by applicants, not Herz. Herz doesn't show or suggest this. Applicants' claim 3, recites "by making use of opportunities of the viewer' s accessing the Internet". Claim 8, 12, 13, 17, 21, 22, 24 and their respective dependent claims all include this concept."

In response, the Examiner, in turn, respectfully disagrees with Appellants and cites again Herz (e.g., for personalized newspapers, or multimedia information which can be downloaded over networks such as the Internet; Col. 51, lines 5-8). In doing so, Herz meets the claimed limitation by taking the opportunity of using/making use of the Internet, i.e. "...to download multimedia

information over the Internet", because, by downloading the multimedia through Internet, Herz clearly suggests that the users must access to/connect to/making use of the Internet in order to perform the function of downloading/transferring.

Appellants further argue, "it does not teach or suggest the concept of claim 3 (or claims 8, 12, 13, 17, 21, 22, 24 and their respective dependent claims) of making use of opportunities of the viewer's accessing the Internet in order to obtain TV program table data or to transfer viewer ID and program information. Similarly, Williams is stating that the database can be updated periodically by phone/network, but it does not state that the opportunity of the user accessing the Internet is advantageously employed to accomplish this."

In response, the Examiner respectfully disagrees with Appelants because Williams' phone/network communication port 128 is the only communication interface that allows Williams' system (Fig. 1) to communicate or use the Internet while the user is watching a TV program (Col. 5, lines 65-15). Williams further discloses the user behavior is monitored and recorded into the behavior log resides within the system 100 of Fig. 1 while using the system to watch TV programs or accessing the Web or Internet (Col. 15, lines 64-Col. 16, lines 18). Williams further discloses that the behavior log is periodically transmitted to the remote server for data compilation purpose while using the system to watch TV programs or accessing the Web or Internet (Col. 16, lines 19-23). Thus, Williams again clearly shows the opportunity of the user accessing

the Internet is advantageously employed to transmit the behavior log to the server while watching the TV program.

Appellants further argue, "...however, this understanding of the Welsh document by the Examiner is respectfully submitted to be incorrect because the program ID in Welsh is encoded in the received television signal as character strings and a decoder 18 simply detects it, as clearly described in Col. 5, lines 47-58 of the Welsh reference."

In response to Appellants' argument "the program ID in Welsh is encoded in the received television signal as character strings", the Examiner respectfully disagrees because Appellants' program ID cited in the claims does not define on how Appellants' program ID was coded; therefore, Appellants' argument is moot.

Appellants further argue, "The term 'detect' in this context of Applicants' claims is different from the context of Welsh. The use of the term 'produce' in Welsh here is more appropriately 'reproduce' which might be considered a synonym for 'detect' in the concept of receiving signals, but that is not what Appellants' claims relate to or claim."

In response, Appellants appear to contradict themselves regarding the term 'detect' in the context of Applicants' claims because Appellants again admit that the term 'produce' in Welsh which might be considered a synonym for 'detect' in the concept of receiving signals. However, Appellants keep maintaining that the term 'produce' in Welsh is not what Appellants' claims relate to or claim without proving the error of the Examiner interpretation of the term

'produce' in Welsh. Therefore, the combination of the rejection meets all Appellants' claims.

Appellants further argue that "Herz is not at all concerned with television broadcast in the conventional sense of signals broadcast via radio frequency propagation... It is not related to applicant's system of obtaining audience data on broadcast programs."

In response, the Examiner respectfully disagrees with Appellants and submits that Herz is indeed concerned with television broadcast in the conventional sense of signals broadcast via radio frequency propagation by showing a CATV distribution system (see Fig. 5 and 6) and Col. 9, lines 52-Col. 10, lines 20.

c. Group III:

Appellants do not clearly point out errors in the rejection of claims 4 and 9 but merely states, "The arguments submitted above apply to this particular rejection also. Rothmuller adds nothing that would teach the particular details of the claims 1 and 6, from which claims 4 and 9 depend, when combines with the other documents."

In response, the Examiner respectfully submits that the combination of Herz, Welsh, Williams and Rothmuller meets all the limitations of claims 4 and 9 including the claims 1 and 6, from which claims 4 and 9 depend.

For the above reasons, it is believed that the rejections should be sustained.

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Art Unit: 2611

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Respectfully submitted,

HT:ht
May 31, 2004

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